IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6244 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL MOHANBHAI JOITABHAI - Petitioner(s)
Versus
GOVINDBHAI BHUDARBHAI SUTHAR & 3 - Respondent(s)

==========

Appearance :
MR DK ACHARYA for Petitioner(s) : 1,
None for Respondent(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/04/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner claiming to be tenant of the land in question has

challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 30.8.2005 passed in Revision Application No.TEN.B.A.253 of 2004 in dismissing the same and confirming the order passed by the Deputy Collector, Patan in Tenancy Appeal No.2 of 2002 as well as the order passed by the Mamlatdar and ALT, Chanasama dated 28.1.2002 in dismissing the application submitted by the petitioner submitted under Section-32-O of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as the “Bombay Tenancy Act” for short].

2. The dispute is with respect to the land bearing Survey No.153 Acre 1 – 21 Gunthas of land situated at Karoda, Taluka Chanasma, District Patan. The petitioner claiming to be a tenant of the land in question submitted an application before the Mamlatdar and ALT, Chanasma under Section-32-O of the Bombay Tenancy Act being

Tenancy Case NO.32-O-1903 of 2001 and on appreciation of evidence and considering the documentary evidence as well as the oral evidence, the Mamlatdar and ALT, Chanasma held that the petitioner has failed to prove his right as tenant, more particularly, when he himself has claimed to have purchased the very land in question and accordingly, the Mamlatdar and ALT, Chansama closed the proceedings / inquiry under Section-32-O of the Act by its judgment and order dated 28.1.2002. It is required to be noted that the Mamlatdar and ALT relied upon the statement of the very petitioner who claims to be a tenant that he has purchased the land in question and he was holding the land as the owner. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Chansama dated 28.1.2002 passed in Tenancy Case No.32-O / 1903 / 2001, the petitioner preferred the appeal before the Deputy Collector, Patan being Tenancy Appeal No.2 of 2002 and the Deputy Collector, Patan also

by its order dated 9.2.2004 dismissed the said revision application. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Patan dated 9.2.2004 passed in Tenancy Appeal No.2 of 2002 in dismissing the same and confirming the order passed by the Mamlatdar and ALT, the petitioner preferred further revision application before the Gujarat Revenue Tribunal being Revision Application No.TEN.B.A.253/2004 and the Gujarat Revenue Tribunal by its judgment and order dated 30.8.2005 dismissed the said revision application confirming the order passed by both the authorities below. Being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Gujarat Revenue Tribunal, the petitioner has preferred the present special civil application under Article 227 of the Constitution of India.

3. Shri D.K.Acharya, learned advocate appearing on behalf of the petitioner has vehemently

submitted that the authorities below have relied upon the order of 1963 with respect of the earlier tenants, however, the said order is not on record and therefore, the said order ought not to have been relied upon by the authorities below. Shri Acharya, learned advocate for the petitioner has relied upon the provisions of Section-15(1) as well as Section-37 of the Bombay Tenancy Act and has submitted that the transaction is voidable and not void and even original tenants are also not on record, and therefore, it is requested that the matter is required to be remanded for fresh inquiry after joining the original tenants and therefore, it is requested to allow the present special civil application.

4. It is required to be noted that even the very petitioner has made a statement before the Mamlatdar and ALT that he has purchased the land in question and that he is holding the land in

question by way of ownership. Once the petitioner claims to be a owner of the land in question after purchasing the same, he cannot claim tenancy rights with regard to the very land and accordingly, the Mamlatdar and ALT has rightly closed the inquiry and rightly held that the petitioner has failed to prove and/or establish his tenancy rights. All three authorities have concurrently found against the petitioner. This is a petition under Article 227 of the Constitution of India and there is no jurisdictional error, much less an error of law, seems to have been committed by any of the authorities below. Even otherwise, as stated above, when the petitioner has made statement that he has purchased the land in question, he cannot claim ownership and even otherwise, the orders passed by all the authorities below which is just and proper.

5. In view of above discussion, there is no substance in the present petition and the same deserves to be dismissed and is accordingly dismissed.

[M.R.Shah, J.]

=kailash=